IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 834 of 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

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CHAUDHRY KESARBHAI PARTHIBHAI
VERSUS
STATE OF GUJARAT

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Appearance:
MR BP MUNSHI for the Petitioner
MR MA BUKHARI for Respondent No.1
MR HS MUNSHAW for Respondent No. 2 to 4
None present for other Respondents

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CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 07/08/2000

C.A.V. JUDGMENT

1. The petitioner, a member of the Mahi Gram Panchayat, Mahi, Taluka Vadgam, Dist. Banaskantha by this petition under Article 226 of the Constitution challenges the orders of the respondent No.2 dated 20-12-1996 passed in Appeal No.A.2/ADM/Upa-Sarpanch/ Election/Appeal/3/96/Vashi and that of the respondent No.1 dated 20-1-1998 in revision application No.305/96 No CHATAN/1096/3795/G in the matter of election of the Up-Sarpanch of the Gram Panchayat aforesaid.

2. The facts of the case in nutshell are that on 27-11-1996 the election of the members of the Mahi Gram Panchayat including of Sarpanch was completed and the list was published. For election of Up-Sarpanch from amongst the members of the Gram Panchayat, the first meeting of the Panchayat as prescribed under sec. 51 of the Gujarat Panchayats Act, 1993 (hereinafter referred to as `the Act, 1993') was fixed on 2-12-1996. The respondent No.4 was appointed by the respondent No.3 as Presiding Officer of this meeting. The time for election was fixed at 11-00 a.m.. The petitioner filed his nomination in Form A before two hours of the prescribed time for the election i.e. 11-00 a.m.. This nomination, there is no dispute between the parties, was submitted by the petitioner at 9-00 a.m. This nomination of the petitioner was accepted by the Presiding Officer. The respondent No.6, there is no dispute between the parties. filed his nomination for the candidature of the Up-Sarpanch at 9-45 a.m. As this nomination was filed beyond the prescribed time limit, it was to be rejected. This fact is also not in dispute. The member of the Gram Panchayat, Shri Dalabhai Jivabhai Metiya was the seconder of the petitioner in the nomination paper. At about 9-55 a.m. he gave in writing to the Presiding Officer of the meeting that he had supported the petitioner only because he was misled and misguided. He has given in writing that he is withdrawing the support given to the petitioner. After this application, on scrutiny of the nomination forms, it is the case of the respondents that the petitioner's nomination form has been rejected. The nomination form of the respondent No.6 was also rejected. The meeting was presided over by the Sarpanch and as both the nominations were rejected, necessary entry in the proceedings to that effect has been written in the resolution book and the meeting was adjourned. For next meeting the time and date were to be announced later on.

3. The petitioner aggrieved of these proceedings of the meeting of the Gram Panchayat filed an appeal before

the District Development Officer, Banaskantha. In the appeal, prayer has also been made for grant of interim relief and the interim relief has been granted. However, ultimately, the appeal was dismissed on 17th December, 1996. Against this order of the Dist. Development Officer, the petitioner preferred revision application before the State of Gujarat under sec.259 of the Act aforesaid. Along with the revision application, the petitioner also filed an application for grant of interim relief but interim relief was not granted.

4. In the meantime, the second meeting of the Gram Panchayat was fixed on 2-1-1997 at 12-00 noon for election of the Dy. Sarpanch by the Taluka Development Officer. Notice of this meeting was served upon the members of the Gram Panchayat but the petitioner, as per the respondent, refused to accept the notice and so the notice was affixed at his residence after following the procedure. In the second meeting there was only the nomination form of the respondent No.6 and accordingly he was declared elected for the office of the Up-Sarpanch to Gram Panchayat uncontested.

5. The revision application of the petitioner came to be dismissed by the revisional authority under its order annexure `A' dated 20-1-1998. Hence, this special civil application.

6. The respondent No.3 filed reply to the special civil application. However, from the record of this special civil application, I do not find that reply is filed by any other respondents. It is also not the case of the counsel for the respondent No.1 and respondents No.2 to 4 that they have filed their reply to the special civil application. So far as the other respondents are concerned, nobody is present on their behalf even to make oral submissions.

7. In this petition, notice has been issued to the respondents on 10-2-1998. On 30-7-1998 when this matter came up for admission, learned counsel for the petitioner prayed for filing of the application for amendment of the petition. This amendment in the petition as prayed for was granted by the court on 2-9-1999 and accordingly the same is carried out in the special civil application. Notice of amended petition has been given to the respondent No.6 but he has not filed any reply to the amended petition also. On 18-10-1999, this petition was admitted. By this amendment of the petition, further prayers are incorporated. Prayer clause (G) in para-14 was inserted

wherein a declaration is sought to declare the petitioner uncontested elected Up-Sarpanch of the Village Panchayat as the only candidate whose nomination form was legally submitted within the stipulated time as per the rules, as per the proceedings conducted during the Chairmanship of the respondent No.4 and further declare that the proceedings conducted by the respondent No.5 as unconstitutional, illegal, invalid and contrary to the Act and Rules inasmuch as two persons cannot function as Presiding Officers of the meeting and consequently declare the minutes and proceedings conducted by respondent No.5 as null and void and further declare that as rest of the proceedings were illegal, unconstitutional and contrary to law, the election of the respondent No.6 be set aside and the petitioner be declared as duly elected Up-Sarpanch of the village Panchayat in accordance with law.

8. In prayer clause (H) as inserted vide amendment of the petition it is prayed that the election of the respondent No.6 as Up-Sarpanch of Village Panchayat in pursuance of the proceedings conducted on 2-1-1997 be declared as unconstitutional, illegal, null and void and the resolution dated 2-1-1997 passed by the Gram Panchayat declaring respondent No.6 as uncontested Up-Sarpanch of the village be quashed and set aside and it be further ordered and directed that the respondent No.6 is not entitled to function as Up-Sarpanch of the village Mahi Gram Panchayat and declare the entire proceedings and the election process as unconstitutional null and void and the respondent No.6 be restrained from functioning as Up-Sarpanch forthwith in the interest of justice.

9. Learned counsel for the petitioner contended that there is no provision under the Gujarat Panchayats Act, 1993 or Gujarat Village Panchayats (Up Sarpanch) Election Rules, 1994 which empowers the seconder to withdraw his support to the candidate who submitted the nomination as candidature for the office of Up-Sarpanch. It has next been contended that the objection raised and prayer made by the seconder in his application filed to the Presiding Officer of the meeting scheduled on 2-12-96 for withdrawing his support to the petitioner is of no consequence and for which the only remedy available to him was to file the election petition. On such an application, it is not permissible to the Presiding Officer of the meeting or the Sarpanch to interdict the election. Once the election process has been started, Shri Munshi, learned counsel for the petitioner contended that it cannot be interdicted by

any person. The election process once started has to be completed and if anybody has any grievance against that election, he has remedy to file the election petition. Alternatively, Shri Munshi learned counsel for the petitioner contended that it is only the say of the person that his signature as seconder on the nomination paper has been taken by the petitioner under the pretext that he may sign for the purpose of filing an application for new bore for the water in their mohalla and it cannot be taken to be a gospel truth. It is a matter of inquiry and it is not the stage where after acceptance of the nomination, the Presiding Officer of the meeting could have gone into the same. Otherwise also, Shri Munshi contended that this is a matter of inquiry and only on making thereof in accordance with law i.e. after giving a notice and opportunity of hearing to the petitioner, if it is proved to the satisfaction of the authority concerned, then only this nomination could have been rejected and not otherwise. Supplementing his contention, Shri Munshi, learned counsel for the petitioner urged that this application has been filed by that person after the time to file the nomination expired. There is all possibility that the respondent No.6 has manipulated the same. The nomination of the petitioner did not suffered from any other defect and it has been accepted. For this dispute, the only authority to adjudicate thereupon is the Presiding Officer of the Election Tribunal and not the Sarpanch or Gram Panchayat or the Presiding Officer of the meeting. Lastly, it is contended that otherwise also, the proceedings of the meeting of the Gram Panchayat dated 2-12-1996 were void-ab-initio as it has been presided over by two persons i.e. by the Taluka Development Officer and the Sarpanch. This meeting could not have been presided over by two persons.

10. On the other hand, the learned counsel for the respondents supported the orders passed by the appellate authority and the revisional authority.

11. Having given my thoughtful consideration to the submissions made by the learned counsel for the parties, I am satisfied that the orders of both the authorities i.e. the appellate and revisional cannot be allowed to stand and the resolution of the Gram Panchayat incorporating therein the decision to reject the nomination of the petitioner and the election and the resolution declaring respondent No.6 as elected Up-Sarpanch also cannot be allowed to stand.

12. The last contention raised by the learned

counsel for the petitioner that the meeting dated 2-12-1996 has been presided over by two persons needs not to be gone into and decided in this matter. The decision on this question in this matter is not necessary as on the first contention of the learned counsel for the petitioner, I am satisfied that this petition deserves to be accepted.

13. Learned counsel for the respondents failed to show any provision from the Act or the relevant Rules which empowers the seconder of the nomination of a candidate for the office of Up-Sarpanch to withdraw it. The time for submitting of the nomination paper for the office of the Up-Sarpanch was upto 9-00 a.m. on 2-12-1996. It is not in dispute that this nomination has been submitted by the petitioner at 9-00 a.m. on 2-12-1996. Except for the ground given for cancellation of the nomination, this nomination of the petitioner was valid in all respects. However, it was rejected only on the ground that the seconder has prayed for withdrawal of his support. I find sufficient merits in the contention of the learned counsel for the petitioner that it is not permissible to the Presiding Officer or the Sarpanch to accept this objection and further to go to the extent to reject the nomination of the petitioner on this ground as the remedy for that person or the respondent No.6 was only to file the election petition.

14. I also find substance in the submission of Shri Munshi that when the nomination of the respondent No.6 was not submitted in time and it is bound to be rejected, possibility of procuring such an objection application by the respondent No.6 i.e. by the person interested in the matter cannot be excluded. The appellate as well as the revisional authority have proceeded in the matter as if it is an absolute right of or a veto with the seconder to render the nomination, which otherwise was valid, to be invalid at any time before election. Election is a democratic process and in that process once the seconder proposes a candidate he has no right whatsoever to withdraw the same later in point of time. The nomination can be withdrawn by the candidate but the seconder or the proposer has no right whatsoever to withdraw the same. But that is not the law.

15. In case what has been permitted in this matter is accepted to be correct, legal and in conformity of the Act or Rules then seconder and/or proposer has right of withdrawal of the nomination of the candidate. This way it will become very very difficult to hold the

election of the office of the Up-Sarpanch of the Gram Panchayat. Not only this it will result in conferment of right indirectly to the proposer and/or seconder to withdraw it, though the legislature otherwise in its wisdom did not confer the same. Unless this right is conferred upon him under Act or rules framed thereunder it cannot be availed of what to say to grant by the Presiding Officer of the meeting or the Sarpanch to this person. The appellate as well as the revisional authority have not cared to go on this vital and important legal issue and they have decided the matter as if what the seconder says has to be accepted to be true and correct and has a right to withdraw his proposal at any point of time. If that is permitted then he can go to the extent of withdrawing the proposal even after election and that is not the law. It is a case where on 2-12-1996 only valid nomination of the petitioner was there and it was rendered invalid on scrutiny on the ground which is wholly untenable and was not available to the Presiding Officer or the Sarpanch of the Gram Panchayat. It is to be stated at the cost of repetition that except for the withdrawal of the seconder's support the nomination of the petitioner for the candidature for the office of the Up-Sarpanch was legal and valid. It is a clear case where the seconder, respondent No.6 and other respondents have acted, proceeded and decided contrary to what our democratic system desires, needs and calls for.

16. The seconder has not denied his signature on the nomination of the petitioner seconding him as a candidate for the office of Up-Sarpanch of the Gram Panchayat. His say was that the petitioner got it for some other purpose. It is a highly disputed question of fact. It needs full-fledged inquiry after notice to both the persons, the petitioner and the seconder. The form for adjudication of this disputed question of fact is the election petition and not the Presiding Officer of the meeting or the Sarpanch of the Gram Panchayat. It may be an election dispute and proper and appropriate remedy for the seconder for adjudication on his grievance can only be the election petition. It is not the case of the respondents that the seconder has no remedy in the matter after election. It is a settled law that once an election process has started it should be permitted by all to be completed. No interdiction is permitted. Nobody can be permitted to stall the election after start of its process by adopting such tactics. Bearing in mind, this legal position, Act and the relevant Rules, the Presiding Officer of the meeting of election for Up-Sarpanch or the Sarpanch has no power

to go on and adjudicate upon this dispute raised by the seconder of the nomination of the petitioner for the election of the office of the Up-Sarpanch. None of the counsel appearing for the respondents are able to point out any provision from the Act or the Rules wherein withdrawal of the proposer or seconder to the nomination of a candidate for the office of Up-Sarpanch is a ground given for rejection of the nomination. To contest an election for the office of the Up-Sarpanch of a Gram Panchayat is a statutory right of an elected member of the Gram Panchayat. It is a valuable right and for denial of the same to a member, a procedure is to be provided under the very statute which confers the same to the member. In the Act or the relevant Rules, the Presiding Officer of the meeting/Sarpanch has been given power to decide the dispute raised by the seconder and/or proposer of the nomination of a candidate for the election of the Up-Sarpanch. Be that as it may. Otherwise also, this decision of the nomination of the petitioner is not only wholly illegal and invalid but ab-initio void.

17. It is not in dispute that this decision of the rejection of the nomination paper or the petitioner was made without notice and affording an opportunity of hearing to him. How behind the back of the petitioner and without holding an inquiry, following the principles of natural justice, any adverse decision could have been made by the Presiding Officer of the meeting or the Sarpanch of the Gram Panchayat. The decision of the Presiding Officer of the meeting or the Sarpanch of the Gram Panchayat rejecting the nomination paper of the petitioner for election of the office of the Up-Sarpanch is against the basic principles of fair play and natural justice and it cannot be allowed to stand. Even if it is presumed for the sake of the arguments that this power of rejection of the nomination paper of the petitioner for election to the office of the Up-Sarpanch does lie with the Presiding Officer of the meeting or the Sarpanch but the decision is amenable to the judicial review of this Court under Article 226 or 227 of the Constitution of India. The Court would be justified in interfering with the decision of the Presiding Officer of the meeting or Sarpanch of Gram Panchayat where he transgressed the jurisdiction in exercising the same or it is established that he passed the order without application of mind or in violation of principles of natural justice, or decision in question is malafide one or the same is made on some extraneous consideration. Though prima-facie this decision of the Presiding Officer of the meeting or Sarpanch of the Gram

Panchayat appears to be malafide one or one made on some extraneous consideration but nothing final can be said as the seconder is not a party to this petition. But certainly it is a decision made by the person concerned without application of mind, and in violation of the principles of natural justice. In case where the concerned person would have cared to read the relevant provisions of the Act or the Rules certainly decision would have been otherwise.

18. There must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decision should not be reached behind their back, proceedings which affect their right, should not continue in their absence and they should not be precluded from participating in them. Natural justice demands that the person who is liable to be directly affected even by an administrative action should be given prior adequate notice of what is proposed so as to enable him to make representation on his behalf, to appear at the hearing or inquiry it it to be held and effectively to meet the points raised. The requirement of audi alteram partem has two elements; (i) the opportunity to make representation must be given and (ii) such opportunity must be reasonable. Both these matters are justiciable. I am here not deciding whether the action of the concerned person to reject the nomination paper of the petitioner for election to the office of the Up-Sarpanch is administrative or quasi-judicial but even an administrative decision declaring the nomination paper of a member for the election to the Office of Up-Sarpanch invalid without giving notice to the petitioner violated the rules of natural justice. The consequences of the decision of the concerned person of rejection of the nomination paper of the petitioner for the office of the Up-Sarpanch are:

(a) he has been deprived of his vested statutory right to contest election for the Office of Up-Sarpanch of Gram Panchayat,

(b) as his was only valid nomination paper, the right to be elected uncontested.

(c) to continue to held this office till the term of Panchayat or till he is removed or disqualified to hold office after following procedure laid down.

19. It is not in dispute that the decision to reject the nomination paper of the petitioner for election to the office of the Up-Sarpanch is made by the concerned person without notice and it cannot be allowed to stand. Dismissal of this writ petition will result in restoration of an ab-initio void order or an invalid and illegal order which this Court will not permit otherwise it will result in perpetuating illegality.

20. The petitioner filed an appeal and the revision application. It is true that earlier in appeal, interim relief was granted which was vacated later in point of time but nevertheless the matter was sub-judice before the revisional authority. By taking benefit of the fact that interim relief has not been granted, the second meeting was held and the respondent No.6 was declared uncontested elected as Deputy Sarpanch of the Gram Panchayat. From the subsequent facts also, prima-facie what the petitioner's counsel contends that the respondent No.6 has brought seconder of the nomination of the petitioner on the scene with the connivance of other persons interested in getting rejected the nomination paper of the petitioner as a tool for the same may be possible. The petitioner has not contested the election held in second meeting. Even if it is accepted that the notice of the second meeting was sent to the petitioner and he has not accepted the same, the election of the respondent No.6 on the basis of this will not get validated. When the petitioner is contesting for his right of declaring him uncontested elected Up-Sarpanch of the Gram Panchayat what for he is to bother for this second election meeting. It is understandable where he fails in the proceedings, he may be estopped from challenging the election of the respondent No.6 on the ground what are given in the present case. The election which has been held during the pendency of the revision application filed by the petitioner was subject to final decision in the matter.

21. As a result of the aforesaid discussion, it is hereby declared that the rejection of the nomination of the petitioner as candidate for the office of Up-Sarpanch of the Gram Panchayat was illegal, arbitrary and perverse. The petitioner's was a legal and valid nomination and as there was no other nomination, the Presiding Officer or the Sarpanch had no option except to declare him uncontested elected Up-Sarpanch of the Gram Panchayat. The election of the respondent No.6 was subject to the final decision in the matter and as the rejection of the nomination of the candidature of the petitioner for the office of Up-Sarpanch has been

declared to be illegal, as a consequence thereof the election of the respondent No.6 as Up-Sarpanch of the Gram Panchayat becomes illegal and invalid and accordingly it is declared so. The resolution of the Gram Panchayat dated 2-1-1997 declaring the respondent No.6 as elected Up-Sarpanch of the Gram Panchayat uncontested is quashed and set aside. The petitioner is declared uncontested elected Up-Sarpanch of the Gram Panchayat. Rule is made absolute accordingly.

22. It is a case where the respondents No.4 and 5 have made an attempt to frustrate our democratic procedure of election and a valid nomination of the petitioner was rejected. The respondent No.4 being the Officer of the State Govt. has also acted in most arbitrary manner possibly at the connivance of the interested persons or otherwise. The petitioner has been deprived of his right to hold the office of the Up-Sarpanch for all these years. Except for this action of the respondents No.4, 5 and 6 otherwise the petitioner would have been the Up-Sarpanch of the Gram Panchayat. In the facts of this case, exemplary costs deserves to be awarded in favour of the petitioner. The respondents No.4, 5 and 6 are directed to pay Rs.7000/= each as costs of this petition to the petitioner.

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